

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON**

LISA BUCKNER,

Plaintiff,

Case No. 3:11-cv-320

-vs-

Magistrate Judge Michael R. Merz

:

MONTGOMERY COUNTY JOBS
AND FAMILY SERVICES DIVISION,
et al.,

Defendants.

DECISION AND ORDER

This case is before the Court on Plaintiff's "Second Attempt to Request a Transcript" (Doc. No. 101).

No transcript will be prepared in this case for the following reasons:

1. The Magistrate Judge's Decision granting Defendants summary judgment was not based on any oral testimony which could be transcribed. As recited in the body of the Decision, it was based entirely on written affidavits and documentary evidence submitted with those affidavits. It is in fact extremely rare to have oral testimony in open court (as opposed to deposition testimony) to be considered on a motion for summary judgment and none was involved in this decision.
2. The reasons given by Plaintiff for obtaining a transcript – the need for a transcript to be considered by a District Judge in ruling on Plaintiff's objections to the Magistrate Judge's Decision – do not apply to this case. Because all parties consented to plenary magistrate judge

jurisdiction, there will not be any review by a District Judge. Ohio Rule of Civil Procedure 53, cited by Plaintiff on this point, has no application in federal court where the Federal Rules of Civil Procedure and Title 28 of the United States Code govern. *Sibbach v. Wilson*, 312 U.S. 1, 14 (1940).

Plaintiff's request for a transcript is denied – there is no oral testimony to transcribe.

January 8, 2013.

s/ ***Michael R. Merz***
United States Magistrate Judge